



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,209	09/10/2003	Barry H. Ginsberg	45716	3221

7590 03/30/2009
Stacey J. Longanecker
Roylance, Abrams, Berdo & Goodman, L.L.P.
Suite 600
1300 19th Street, N.W.
Washington, DC 20036

EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
----------	--------------

3735

MAIL DATE	DELIVERY MODE
-----------	---------------

03/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/658,209	Applicant(s) GINSBERG, BARRY H.	
	Examiner ROBERT L. NASSER	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,7,15-21,27,28,35-43,53-62,65 and 67-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-42 is/are allowed.
- 6) ☒ Claim(s) 6,7,15-21,27,28,43,53-62,65 and 67-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/17/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3735

The examiner notes that upon final review of the case, the following issue were noted. As such, the finality of the previous action is being withdrawn and the following new action issued.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-21, 54-62, 65, and 67-69 rejected under 35 U.S.C. 101 because the claims are drawn to a mathematical algorithm. Applicant might overcome this rejection by tying at least one of the steps of the invention to appropriate structure, such as calculating use a processing means.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 43 under 35 U.S.C. 103(a) as obvious over Causey III in view of Smith 5108889 and Drinan et al 2002/022773. Causey teaches a device for making multiple measurements of glucose values, and computing an average value of the glucose values, and then allowing a user to scroll through a display sequence that includes the individual values (See column 11, lines 6-8). As such, it receives a user request to annunciate the average and each of the individual measured values in a scroll like

Art Unit: 3735

(round robin) sequence. The device has forward and backward keys to navigate through the data. Hence, there is a first area for displaying constituent values. The examiner notes that Causey does not state that an indicator is displayed in a second display area. The examiner notes that Smith shows a method to scroll through constituent data, where a time indicator is displayed with the data (see column 55, beginning at line 60). Hence, it would have been obvious to modify Causey to display an indication of the time for each sample, so as to alert the user of when the data has been obtained. The examiner notes that since each data point has a different time reference, then the device displays n indicators with n data points. In addition, since the indicator is separate from the data on the display, they are displayed in first and second areas. However, the combination displays one constituent at a time. Drinan teaches in paragraph 5 another method of scrolling through data, where all of the indicators are displayed, but the indicator of the data currently being displayed is indicated differently than the others. Hence, it would have been obvious to modify the combination to use such a method of scrolling through data, as it is the simple substitution of one known display method for another. Alternatively, there are a finite number of identified ways to display the data and it would have been obvious to try the method of Drinan. With respect to claim 4, Causey does not state how many values are used in the average. However, the examiner takes official notice that it is well known to provide an average value with more than 2 values, to provide a more accurate average. Hence, it would have been obvious to modify to use more than 2 values in the average, in order to provide a better picture of the overall patient condition. As such,

Art Unit: 3735

the third and so on values would be annunciated sequentially until the last value has been annunciated. Claim 11 is rejected in that the exact form of the indicators on the display has not been disclosed to be for a particular purpose or to solve a stated problem. As such, the exact form would have been a mere matter of design choice for one skilled in the art, as all indicators appear to function equally as well as the others. Claim 12 is rejected in that the time and day are also displayed, such that the second display area is the time and the third area is the date. Claim 22 is rejected in that there is an input device to scroll through the data. Claim 43 is rejected in that the exact form of the input device would have been a mere matter of design choice. Claims 25, 29, 30, 32, 33, 45, 46, 50, and 51 are rejected for the reasons given above.

Claims 6, 7, and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Causey III in view of Smith, Drinan et al, and Brown et al 2005/0059895. In addition to the features of the combination discussed above, Brown teaches in paragraph [0063] that it is known to display the standard deviation of constituent values on the display. As such, it would have been obvious to modify the combination to display the standard deviation, to provide a more complete picture of the patient's condition.

Claims 15-21, 28, 35, 36, 38-43, 53-62, 65, and 67-69 define over the art in that none of the art selects a stored data point to display if the time period has not passed, as claimed.

Applicant's arguments filed 2/12/2009 have been fully considered but they are moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/
Primary Examiner, Art Unit 3735

RLN
March 26, 2009